

Adopted	Rejected
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COMMITTEE REPORT

YES: 12

NO: 0

MR. SPEAKER:

*Your Committee on Environmental Affairs, to which was referred Senate Bill 169, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-23-5.5-1 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this
- 5 chapter:
- 6 (1) "board" means the Indiana recycling and energy development
- 7 board created by this chapter;
- 8 (2) "department" means the department of commerce; ~~and~~
- 9 (3) "director" refers to the director of the office of energy policy
- 10 of the department; **and**
- 11 (4) "waste tire" means:
- 12 (A) a whole tire that:
- 13 (i) is not suitable for the tire's original purpose; and
- 14 (ii) has a volume of not more than four (4) cubic feet; or
- 15 (B) one (1) or more tires that:
- 16 (i) have been shredded, ground, or otherwise altered;

1 **and**

2 **(ii) have a combined weight of not more than twenty-five**
 3 **(25) pounds or total volume of not more than one and**
 4 **one-quarter (1.25) cubic feet.**

5 SECTION 2. IC 4-23-5.5-17 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2005]: **Sec. 17. (a) The waste tire assistance**
 8 **fund is established. The purpose of the fund is to promote and**
 9 **assist waste tire collection, reuse, and recycling throughout**
 10 **Indiana. The fund shall be administered by the board.**

11 **(b) Sources of money for the fund consist of the following:**

12 **(1) Fees collected under IC 13-20-13-7.**

13 **(2) Repayment proceeds of loans made from the fund.**

14 **(3) Gifts and donations.**

15 **(c) Money remaining in the fund at the end of a state fiscal year**
 16 **does not revert to the state general fund.**

17 **(d) The board shall use money in the fund to do the following:**

18 **(1) Make forgivable loans to assist persons that derive a**
 19 **beneficial use from waste tires. When the board makes a loan**
 20 **to a person under this subdivision, the loan must require the**
 21 **board to subtract fifteen cents (\$0.15) from the amount of the**
 22 **loan for each waste tire used by the person. The board shall**
 23 **establish loan:**

24 **(A) amounts;**

25 **(B) terms; and**

26 **(C) interest rates.**

27 **(2) Reimburse:**

28 **(A) solid waste management districts established under**
 29 **IC 13-21-3-1; or**

30 **(B) municipal corporations;**

31 **that conduct waste tire collection days. The board shall**
 32 **establish criteria for reimbursing solid waste management**
 33 **districts or municipal corporations under this subdivision.**

34 **(3) Provide incentive payments and reimbursements for waste**
 35 **tire processors and waste tire end users that use waste tires**
 36 **that originate in Indiana for a beneficial purpose. The board**
 37 **shall establish criteria for paying or reimbursing persons**
 38 **under this subdivision. Payments and reimbursements under**

1 **this subdivision may not:**

2 **(A) exceed twenty dollars (\$20) per ton of waste tires used**
 3 **by a waste tire processor or waste tire end user; and**

4 **(B) be made to a person for:**

5 **(i) disposing of waste tires at a landfill; or**

6 **(ii) using waste tires as a daily cover for a landfill.**

7 **(e) A:**

8 **(1) person that wants a loan from the fund under subsection**

9 **(d)(1);**

10 **(2) solid waste management district or municipal corporation**

11 **that wants to be reimbursed from the fund under subsection**

12 **(d)(2); or**

13 **(3) person that wants an incentive payment or reimbursement**

14 **from the fund under subsection (d)(3);**

15 **must file an application with the board on a form prescribed by the**
 16 **board.**

17 SECTION 3. IC 6-1.1-45 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2005]:

20 **Chapter 45. Brownfield Tax Reduction or Waiver**

21 **Sec. 1. As used in this chapter:**

22 **(1) "board" refers to the county property tax assessment**
 23 **board of appeals;**

24 **(2) "brownfield" has the meaning set forth in IC 13-11-2-19.3;**

25 **(3) "contaminant" has the meaning set forth in IC 13-11-2-42;**

26 **(4) "delinquent tax liability" means:**

27 **(A) delinquent property taxes;**

28 **(B) delinquent special assessments;**

29 **(C) interest;**

30 **(D) penalties; and**

31 **(E) costs;**

32 **assessed against a brownfield and entered on the tax duplicate**
 33 **that a person seeks to have waived or reduced by filing a**
 34 **petition under section 2 of this chapter;**

35 **(5) "department" refers to the department of local**
 36 **government finance, unless the specific reference is to the**
 37 **department of environmental management; and**

38 **(6) "fiscal body" refers to the fiscal body of:**

- 1 (A) the city if the brownfield is located in a city;
- 2 (B) the town if the brownfield is located in a town; or
- 3 (C) the county if the brownfield is not located in a city or
- 4 town.

5 **Sec. 2. A person that owns or desires to own a brownfield may**
 6 **file a petition with the county auditor seeking a reduction or waiver**
 7 **of the delinquent tax liability. The petition must:**

- 8 (1) be on a form:
 - 9 (A) prescribed by the state board of accounts; and
 - 10 (B) approved by the department;
- 11 (2) state:
 - 12 (A) the amount of the delinquent tax liability; and
 - 13 (B) when the delinquent tax liability arose;
- 14 (3) describe:
 - 15 (A) the manner in which; and
 - 16 (B) when;
- 17 the petitioner acquired or proposes to acquire the brownfield;
- 18 (4) describe the conditions existing on the brownfield that
- 19 have prevented the sale or the transfer of title to the county;
- 20 (5) describe the plan of the petitioner for:
 - 21 (A) addressing any contaminants on the brownfield; and
 - 22 (B) the intended use of the brownfield;
- 23 (6) include the date by which the plan referred to in
- 24 subdivision (5) will be completed;
- 25 (7) include a statement from the department of environmental
- 26 management that the property is a brownfield;
- 27 (8) state whether the petitioner:
 - 28 (A) has had an ownership interest in an entity that
 - 29 contributed; or
 - 30 (B) has contributed;
- 31 to the contaminant or contaminants on the brownfield;
- 32 (9) state whether any part of the delinquent tax liability can
- 33 reasonably be collected from a person other than the
- 34 petitioner;
- 35 (10) state that the petitioner seeks:
 - 36 (A) a waiver of the delinquent tax liability; or
 - 37 (B) a reduction of the delinquent tax liability in a specified
 - 38 amount; and

(11) be accompanied by a fee in an amount established by the county auditor for:

(A) completing a title search; and

(B) processing the petition.

Sec. 3. On receipt of a petition under section 2 of this chapter, the county auditor shall determine whether the petition is complete. If the petition is not complete, the county auditor shall return the petition to the petitioner and describe the defects in the petition. The petitioner may correct the defects and file the completed petition with the county auditor. On receipt of a complete petition, the county auditor shall forward a copy of the complete petition to:

(1) the assessor of the township in which the brownfield is located;

(2) the owner, if different from the petitioner;

(3) all persons that have, as of the date of the filing of the petition, a substantial property interest of public record in the brownfield;

(4) the board;

(5) the fiscal body;

(6) the department of environmental management; and

(7) the department.

Sec. 4. On receipt of a complete petition as provided under sections 2 and 3 of this chapter, the board shall at its earliest opportunity conduct a public hearing on the petition. The board shall give notice of the date, time, and place fixed for the hearing:

(1) by mail to:

(A) the petitioner;

(B) the owner, if different from the petitioner;

(C) all persons that have, as of the date of the filing of the petition, a substantial interest of public record in the brownfield; and

(D) the assessor of the township in which the brownfield is located; and

(2) under IC 5-3-1.

Sec. 5. (a) Subject to section 8(g) of this chapter, the board may recommend that the department grant the petition or that the department approve a reduction of the delinquent tax liability in an amount less than the amount sought by the petitioner if the board

- 1 **determines that:**
- 2 **(1) the brownfield was acquired or is proposed to be acquired**
- 3 **as a result of:**
- 4 **(A) sale or abandonment in a bankruptcy proceeding;**
- 5 **(B) foreclosure or a sheriff's sale;**
- 6 **(C) receivership; or**
- 7 **(D) purchase from a political subdivision;**
- 8 **(2) the plan referred to in section 2(5) of this chapter is in the**
- 9 **best interest of the community;**
- 10 **(3) the waiver or reduction of the delinquent tax liability:**
- 11 **(A) is in the public interest; and**
- 12 **(B) will facilitate development or use of the brownfield;**
- 13 **(4) the petitioner:**
- 14 **(A) has not had an ownership interest in an entity that**
- 15 **contributed; and**
- 16 **(B) has not contributed;**
- 17 **to the contaminant or contaminants on the brownfield;**
- 18 **(5) the department of environmental management has**
- 19 **determined that the property is a brownfield;**
- 20 **(6) if the petitioner is the owner of the brownfield, the**
- 21 **delinquent tax liability sought to be waived or reduced arose**
- 22 **before the petitioner's acquisition of the brownfield; and**
- 23 **(7) no part of the delinquent tax liability can reasonably be**
- 24 **collected from a person other than the owner of the**
- 25 **brownfield.**
- 26 **(b) After the hearing and completion of any additional**
- 27 **investigation of the brownfield or of the petitioner that the board**
- 28 **considers necessary, the board shall:**
- 29 **(1) give notice, by mail, to the parties listed in section 4(1) of**
- 30 **this chapter of the board's recommendation that:**
- 31 **(A) the fiscal body deny the petition; or**
- 32 **(B) the department:**
- 33 **(i) deny the petition;**
- 34 **(ii) waive the delinquent tax liability, subject to section**
- 35 **8(g) of this chapter; or**
- 36 **(iii) reduce the delinquent tax liability by a specified**
- 37 **amount, subject to section 8(g) of this chapter; and**
- 38 **(2) forward to the department and the fiscal body a copy of:**

- 1 (A) the board's recommendation; and
- 2 (B) the documents submitted to or collected by the board
- 3 at the public hearing or during the course of the board's
- 4 investigation of the brownfield or of the petitioner.

5 **Sec. 6. (a) The fiscal body shall at a regularly scheduled meeting:**

- 6 (1) review the petition and all other materials submitted by
- 7 the board under section 5 of this chapter; and
- 8 (2) determine whether to:
- 9 (A) deny the petition;
- 10 (B) recommend that the department waive the delinquent
- 11 tax liability, subject to section 8(g) of this chapter; or
- 12 (C) recommend that the department reduce the delinquent
- 13 tax liability by a specified amount, subject to section 8(g) of
- 14 this chapter.

15 The fiscal body may recommend a reduction of the delinquent tax
 16 liability in an amount that differs from the amount of reduction
 17 recommended by the board.

18 (b) The fiscal body shall:

- 19 (1) publish notice under IC 5-3-1 of its consideration of the
- 20 petition under this section; and
- 21 (2) forward to the department written notice of its action
- 22 under this section.

23 **Sec. 7. (a) On receipt by the department of a recommendation**
 24 **by the fiscal body to waive or reduce the delinquent tax liability,**
 25 **the department shall:**

- 26 (1) review:
- 27 (A) the petition and all other materials submitted by the
- 28 board; and
- 29 (B) the notice received from the fiscal body; and
- 30 (2) subject to subsection (b), determine whether to:
- 31 (A) deny the petition;
- 32 (B) waive the delinquent tax liability, subject to section 8(g)
- 33 of this chapter; or
- 34 (C) reduce the delinquent tax liability by a specified
- 35 amount, subject to section 8(g) of this chapter.

36 The department may reduce the delinquent tax liability in an
 37 amount that differs from the amount of reduction recommended by
 38 the board or the fiscal body.

(b) The department's determination to waive or reduce the delinquent tax liability under subsection (a) is subject to the limitation in section 8(f)(2) of this chapter.

Sec. 8. (a) The department shall give notice of its determination under section 7 of this chapter and the right to seek an appeal of the determination by mail to:

- (1) the petitioner;
- (2) the owner, if different from the petitioner;
- (3) all persons that have, as of the date of the filing of the petition under section 2 of this chapter, a substantial property interest of public record in the brownfield;
- (4) the assessor of the township in which the brownfield is located;
- (5) the board;
- (6) the fiscal body; and
- (7) the county auditor.

(b) A person aggrieved by a determination of the department under section 7 of this chapter may obtain an additional review by the department and a public hearing by filing a petition for review with the county auditor of the county in which the brownfield is located not more than thirty (30) days after the department gives notice of the determination under subsection (a). The county auditor shall transmit the petition for review to the department not more than ten (10) days after the petition is filed.

(c) On receipt by the department of a petition for review, the department shall set a date, time, and place for a hearing. At least ten (10) days before the date fixed for the hearing, the department shall give notice by mail of the date, time, and place fixed for the hearing to:

- (1) the person that filed the appeal;
- (2) the petitioner;
- (3) the owner, if different from the petitioner;
- (4) all persons that have, as of the date the petition is filed, a substantial interest of public record in the brownfield;
- (5) the assessor of the township in which the brownfield is located;
- (6) the board;
- (7) the fiscal body; and

1 **(8) the county auditor.**

2 **(d) After the hearing, the department shall give the parties listed**
3 **in subsection (c) notice by mail of the final determination of the**
4 **department. The department's final determination under this**
5 **subsection is subject to the limitations in subsections (f)(2) and (g).**

6 **(e) The petitioner under section 2 of this chapter shall provide**
7 **to the county auditor reasonable proof of ownership of the**
8 **brownfield:**

9 **(1) if a petition is not filed under subsection (b), at least thirty**
10 **(30) days but not more than one hundred twenty (120) days**
11 **after notice is given under subsection (a); or**

12 **(2) after notice is given under subsection (d) but not more**
13 **than ninety (90) days after notice is given under subsection**
14 **(d).**

15 **(f) The county auditor:**

16 **(1) shall, subject to subsection (g), reduce or remove the**
17 **delinquent tax liability on the tax duplicate in the amount**
18 **stated in:**

19 **(A) if a petition is not filed under subsection (b), the**
20 **determination of the department under section 7 of this**
21 **chapter; or**

22 **(B) the final determination of the department under this**
23 **section;**

24 **not more than thirty (30) days after receipt of the proof of**
25 **ownership required in subsection (e); and**

26 **(2) may not reduce or remove any delinquent tax liability on**
27 **the tax duplicate if the petitioner under section 2 of this**
28 **chapter fails to provide proof of ownership as required in**
29 **subsection (e).**

30 **(g) A reduction or removal of delinquent tax liability under**
31 **subsection (f) applies until the county auditor makes a**
32 **determination under this subsection. After the date referred to in**
33 **section 2(6) of this chapter, the county auditor shall determine**
34 **whether the petitioner successfully completed the plan described in**
35 **section 2(5) of this chapter by that date. If the county auditor**
36 **determines that the petitioner completed the plan by that date, the**
37 **reduction or removal of delinquent tax liability under subsection**
38 **(f) becomes permanent. If the county auditor determines that the**

petitioner did not complete the plan by that date, the county auditor shall restore to the tax duplicate the delinquent taxes reduced or removed under subsection (f), along with interest in the amount that would have applied if the delinquent taxes had not been reduced or removed.

Sec. 9. As provided in IC 6-1.5-5-1, a petitioner under section 2 of this chapter may initiate an appeal of the department's final determination under section 8 of this chapter by filing a petition with the county assessor not more than forty-five (45) days after the department gives the petitioner notice of the final determination.

SECTION 4. IC 6-1.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The Indiana board shall conduct impartial review of all appeals of final determinations of the department of local government finance made under the following:

- (1) IC 6-1.1-8.
- (2) IC 6-1.1-14-11.
- (3) IC 6-1.1-16.
- (4) IC 6-1.1-26-2.
- (5) IC 6-1.1-45-8.**

(b) Each notice of final determination issued by the department of local government finance under a statute listed in subsection (a) must give the taxpayer notice of:

- (1) the opportunity for review under this section; and
- (2) the procedures the taxpayer must follow in order to obtain review under this section.

(c) Except as provided in subsection (e), in order to obtain a review by the Indiana board under this section, the taxpayer must file a petition for review with the appropriate county assessor not later than forty-five (45) days after the notice of the department of local government finance's action is given to the taxpayer.

(d) The county assessor shall transmit a petition for review under subsection (c) to the Indiana board not later than ten (10) days after the petition is filed.

(e) In order to obtain a review by the Indiana board of an appeal of a final determination of the department of local government finance under IC 6-1.1-8-30, the public utility company must follow the procedures in IC 6-1.1-8-30.

SECTION 5. IC 6-3.1-23-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 4. As used in this chapter, "state tax liability" means a taxpayer's total tax liability ~~incurred under:~~

(1) ~~IC 6-2.5 (the state gross retail and use tax);~~

(2) ~~IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);~~

(3) ~~IC 6-5.5 (the financial institutions tax); and~~

(4) ~~IC 27-1-18-2 (the insurance premiums tax);~~

for a listed tax (as defined in IC 6-8.1-1-1), as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

SECTION 6. IC 6-3.1-23-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 5. (a) A taxpayer is entitled to a credit equal to the amount determined under section 6 of this chapter against the taxpayer's state tax liability for a taxable year if the following requirements are satisfied:

(1) The taxpayer does the following:

(A) Makes a qualified investment in that taxable year.

~~(B) Makes a good faith attempt to recover the costs of the environmental damages from the liable parties.~~

~~(C)~~ **(B)** Submits a plan to the legislative body that: **the following to the Indiana development finance authority:**

(i) ~~describes~~ **A description of** the taxpayer's proposed redevelopment of the property.

(ii) ~~indicates~~ The sources and amounts of money to be used for the remediation and proposed redevelopment of the property. ~~and~~

(iii) ~~estimates~~ **An estimate of** the value of the remediation and proposed redevelopment.

(iv) A description documenting any good faith attempts to recover the costs of the environmental damages from liable parties.

(v) Proof of appropriate zoning for the intended reuse.

(vi) A letter supporting the proposed project and redevelopment from the legislative body.

(vii) The documentation described in subsection (b).

~~(D) Certifies to the legislative body that the taxpayer:~~

- 1 (i) has never had an ownership interest in an entity that
- 2 contributed; and
- 3 (ii) has not contributed;
- 4 to contamination (as defined in IC 13-11-2-43) that is the
- 5 subject of the voluntary remediation; as determined under the
- 6 written standards adopted by the department of environmental
- 7 management and the Indiana development finance authority.
- 8 (2) The legislative body, after holding a public hearing of which
- 9 notice was given under IC 5-3-1, adopts a resolution:
- 10 (A) determining that:
- 11 (i) the estimate of the value of the remediation and proposed
- 12 redevelopment included in the plan under subdivision
- 13 (1)(C)(iii) is reasonable for projects of that nature; and
- 14 (ii) the plan submitted under subdivision (1)(C) is in the best
- 15 interest of the community;
- 16 (B) determining that the taxpayer:
- 17 (i) has never had an ownership interest in an entity that
- 18 contributed; and
- 19 (ii) has not contributed;
- 20 to contamination (as defined in IC 13-11-2-43) that is the
- 21 subject of the voluntary remediation; as determined under the
- 22 written standards adopted by the department of environmental
- 23 management and the Indiana development finance authority;
- 24 and
- 25 (C) approving the credit.
- 26 (3) (2) The department determines under section 15 of this chapter
- 27 that the taxpayer's return claiming the credit is filed with the
- 28 department before the maximum amount of credits allowed under
- 29 this chapter is met.
- 30 (b) In determining whether the redevelopment is in the best interest
- 31 of the community, the legislative body must consider, among other
- 32 things, whether the proposed development promotes:
- 33 (1) the development of housing;
- 34 (2) the development of green space;
- 35 (3) the development of high technology businesses; or
- 36 (4) the creation or retention of high paying jobs.
- 37 (b) The documentation referred to in subsection (a)(1)(B)(vii)
- 38 consists of information reflecting that the taxpayer:

(1) has never had an ownership interest in an entity that caused or contributed to; and

(2) has not caused or contributed to;

the release or threatened release of a hazardous substance, a contaminant, petroleum, or a petroleum product that is the subject of the remediation.

(c) The Indiana development finance authority shall:

(1) determine whether the taxpayer meets the requirements of subsection (a)(1); and

(2) if the taxpayer meets the requirements of subsection (a)(1), certify to the taxpayer that the taxpayer is eligible for the credit allowed under this chapter.

SECTION 7. IC 6-3.1-23-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 6. The amount of the credit allowed under this chapter **with respect to each brownfield site** is equal to the lesser of:

(1) ~~one~~ **two** hundred thousand dollars (~~\$100,000~~); (**\$200,000**); or

(2) **the sum of:**

(A) ~~ten~~ **one hundred** percent (~~10%~~) (**100%**) multiplied by the **first one hundred thousand dollars (\$100,000)** of qualified investment made by the taxpayer during the taxable year; **plus**

(B) **fifty percent (50%) multiplied by the amount of the qualified investment made by the taxpayer during the taxable year that exceeds one hundred thousand dollars (\$100,000).**

SECTION 8. IC 6-3.1-23-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 12. (a) To be entitled to a credit under this chapter, a taxpayer must request the department of environmental management and the Indiana development finance authority to determine if costs incurred in a voluntary remediation involving a brownfield are qualified investments.

(b) The request under subsection (a) must be made before the costs are incurred.

(c) Upon receipt of a request under subsection (a), the department of environmental management and the Indiana development finance authority shall:

(1) examine the costs; ~~under the standards adopted by the department of environmental management;~~ and

1 (2) certify any costs that the department and the authority
2 determine to be a qualified investment.

3 (d) Upon completion of a voluntary remediation for which costs
4 have been certified as a qualified investment under subsection (c), the
5 taxpayer:

6 (1) shall notify the department of environmental management; and

7 (2) shall request from the department of environmental
8 management:

9 (A) with respect to voluntary remediation conducted under
10 IC 13-25-5, the certificate of completion issued by the
11 commissioner under IC 13-25-5-16 for the voluntary
12 remediation work plan under which the costs certified under
13 subsection (c)(2) were incurred; or

14 (B) with respect to voluntary remediation not conducted under
15 IC 13-25-5, a certification of the costs incurred for the
16 voluntary remediation that are consistent with the costs
17 certified under subsection (c)(2).

18 SECTION 9. IC 6-3.1-23-13 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

20 Sec. 13. (a) To receive the credit provided by this chapter, a taxpayer
21 must claim the credit on the taxpayer's state tax return or returns in the
22 manner prescribed by the department of state revenue.

23 (b) The taxpayer shall submit the following to the department of
24 state revenue:

25 (1) The certification of the qualified investment by the department
26 of environmental management and the Indiana development
27 finance authority under section 12(c) of this chapter.

28 (2) Either:

29 (A) an official copy of the certification referred to in section
30 12(d)(2)(A) of this chapter; or

31 (B) the certification issued by the department of environmental
32 management in response to a request under section 12(d)(2)(B)
33 of this chapter.

34 (3) Proof of payment of the certified qualified investment.

35 ~~(4) A copy of the legislative body's resolution adopted under~~
36 ~~section 5(a)(2) of this chapter.~~

37 **(4) The certification received by the taxpayer under section**
38 **5(c) of this chapter.**

(5) Information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 10. IC 6-3.1-23-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 15. (a) The amount of tax credits allowed under this chapter may not exceed ~~one two~~ million dollars (~~\$1,000,000~~) **(\$2,000,000)** in a state fiscal year unless the Indiana development finance authority determines under subsection (e) that money is available for additional tax credits in a particular state fiscal year. However, if the maximum amount of tax credits allowed under this subsection exceeds the amount available in the subaccount of the environmental remediation revolving loan fund (IC 13-19-5), the maximum amount of tax credits allowed under this subsection is reduced to the amount available.

(b) The department shall record the time of filing of each return claiming a credit under section 13 of this chapter and shall, except as provided in subsection (c), grant the credit to the taxpayer, if the taxpayer otherwise qualifies for a tax credit under this chapter, in the chronological order in which the return is filed in the state fiscal year.

(c) If the total credits approved under this section equal the maximum amount allowable in a state fiscal year, a return claiming the credit filed later in that same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file the information required by section 13 of this chapter, an amount equal to the credit previously allowed or set aside for the applicant may be allowed to the next eligible applicant or applicants until the total amount has been allowed. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

(d) The department of state revenue shall report the total credits granted under this chapter for each state fiscal year to the Indiana development finance authority. The Indiana development finance authority shall transfer to the state general fund an amount equal to the total credits granted from the subaccount of the environmental remediation revolving loan fund (IC 13-19-5).

(e) At the end of each state fiscal year, the Indiana development finance authority may determine whether money is available in the ~~subaccount of the~~ environmental remediation revolving loan fund (IC 13-19-5) to provide tax credits in excess of the amount set forth in

1 subsection (a) in the subsequent state fiscal year.

2 (f) Before ~~December 31~~ **June 30** of each year, the Indiana
3 development finance authority may assess the demand for tax credits
4 under this chapter and determine whether the need for other brownfield
5 activities is greater than the need for tax credits. If the Indiana
6 development finance authority determines that the need for other
7 brownfield activities is greater than the need for tax credits, the
8 authority may set aside up to three-fourths (3/4) of the amount of
9 allowable tax credits for the subsequent state fiscal year and use it for
10 other brownfield projects.

11 (g) Except as provided in subsection (h), the Indiana development
12 finance authority may use money set aside under subsection (f) for any
13 permissible purpose.

14 (h) Money specifically appropriated for tax credits may not be set
15 aside for another use.

16 SECTION 11. IC 6-3.1-23-16 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
18 Sec. 16. A tax credit may not be allowed under this chapter for a
19 taxable year that begins after December 31, ~~2005~~ **2007**. However, this
20 section does not affect the ability of a taxpayer to carry forward the
21 excess of a tax credit claimed for a taxable year that begins before
22 January 1, ~~2006~~ **2008**, under section 11 of this chapter."

23 Page 1, between lines 5 and 6, begin a new paragraph and insert:

24 "SECTION 13. IC 13-11-2-74.5 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 74.5. (a) "Exempt
26 isolated wetland", for purposes of IC 13-18 and environmental
27 management laws, means an isolated wetland that:

28 (1) is a voluntarily created wetland unless:

29 (A) the wetland is approved by the department for
30 compensatory mitigation purposes in accordance with a permit
31 issued under Section 404 of the Clean Water Act or
32 IC 13-18-22;

33 (B) the wetland is reclassified as a state regulated wetland
34 under ~~IC 13-18-22-6(c)~~ **IC 13-18-22-6(e)**; or

35 (C) the owner of the wetland declares, by a written instrument:

36 (i) recorded in the office of the recorder of the county or
37 counties in which the wetland is located; and

38 (ii) filed with the department;

- 1 that the wetland is to be considered in all respects to be a state
2 regulated wetland;
- 3 (2) exists as an incidental feature in or on:
- 4 (A) a residential lawn;
- 5 (B) a lawn or landscaped area of a commercial or
6 governmental complex;
- 7 (C) agricultural land;
- 8 (D) a roadside ditch;
- 9 (E) an irrigation ditch; or
- 10 (F) a manmade drainage control structure;
- 11 (3) is a fringe wetland associated with a private pond;
- 12 (4) is, or is associated with, a manmade body of surface water of
13 any size created by:
- 14 (A) excavating;
- 15 (B) diking; or
- 16 (C) excavating and diking;
- 17 dry land to collect and retain water for or incidental to
18 agricultural, commercial, industrial, or aesthetic purposes;
- 19 (5) subject to subsection (c), is a Class I wetland with an area, as
20 delineated, of one-half (1/2) acre or less;
- 21 (6) subject to subsection (d), is a Class II wetland with an area, as
22 delineated, of one-fourth (1/4) acre or less;
- 23 (7) is located on land:
- 24 (A) subject to regulation under ~~the~~ United States Department
25 of Agriculture wetland conservation ~~rules, also known as~~
26 **programs, including Swampbuster and the Wetlands**
27 **Reserve Program**, because of voluntary enrollment in a
28 federal farm program; and
- 29 (B) used for agricultural or ~~associated~~ **other** purposes allowed
30 under the ~~rules~~ **programs** referred to in clause (A); or
- 31 (8) is constructed for reduction or control of pollution.
- 32 (b) For purposes of subsection (a)(2), an isolated wetland exists as
33 an incidental feature:
- 34 (1) if:
- 35 (A) the owner or operator of the property or facility described
36 in subsection (a)(2) does not intend the isolated wetland to be
37 a wetland;
- 38 (B) the isolated wetland is not essential to the function or use

- 1 of the property or facility; and
- 2 (C) the isolated wetland arises spontaneously as a result of
- 3 damp soil conditions incidental to the function or use of the
- 4 property or facility; and
- 5 (2) if the isolated wetland satisfies any other factors or criteria
- 6 established in rules that are:
- 7 (A) adopted by the water pollution control board; and
- 8 (B) not inconsistent with the factors and criteria described in
- 9 subdivision (1).
- 10 (c) The total acreage of Class I wetlands on a tract to which the
- 11 exemption described in subsection (a)(5) may apply is limited to the
- 12 larger of:
- 13 (1) the acreage of the largest individual isolated wetland on the
- 14 tract that qualifies for the exemption described in subsection
- 15 (a)(5); and
- 16 (2) fifty percent (50%) of the cumulative acreage of all individual
- 17 isolated wetlands on the tract that would qualify for the exemption
- 18 described in subsection (a)(5) but for the limitation of this
- 19 subsection.
- 20 (d) The total acreage of Class II wetlands on a tract to which the
- 21 exemption described in subsection (a)(6) may apply is limited to the
- 22 larger of:
- 23 (1) the acreage of the largest individual isolated wetland on the
- 24 tract that qualifies for the exemption described in subsection
- 25 (a)(6); and
- 26 (2) thirty-three and one-third percent (33 1/3%) of the cumulative
- 27 acreage of all individual isolated wetlands on the tract that would
- 28 qualify for the exemption described in subsection (a)(6) but for the
- 29 limitation of this subsection.
- 30 (e) An isolated wetland described in subsection (a)(5) or (a)(6) does
- 31 not include an isolated wetland on a tract that contains more than one
- 32 (1) of the same class of wetland until the owner of the tract notifies the
- 33 department that the owner has selected the isolated wetland to be an
- 34 exempt isolated wetland under subsection (a)(5) or (a)(6) consistent
- 35 with the applicable limitations described in subsections (c) and (d).
- 36 SECTION 14. IC 13-11-2-150 IS AMENDED TO READ AS
- 37 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 150. (a) "Owner", for
- 38 purposes of IC 13-23 (except as provided in ~~subsection~~ **subsections** (b)

- 1 **and (c)) means:**
- 2 (1) for an underground storage tank that:
- 3 (A) was:
- 4 ~~(A)~~ (i) in use on November 8, 1984; or
- 5 ~~(B)~~ (ii) brought into use after November 8, 1984;
- 6 for the storage, use, or dispensing of regulated substances, a
- 7 person who owns the underground storage tank; or
- 8 ~~(2) for an underground storage tank that (B) is:~~
- 9 ~~(A)~~ (i) in use before November 8, 1984; but
- 10 ~~(B)~~ (ii) no longer in use on November 8, 1984;
- 11 a person who owned the tank immediately before the
- 12 discontinuation of the tank's use; **or**
- 13 **(2) a person who conveyed ownership or control of the**
- 14 **underground storage tank to a political subdivision (as**
- 15 **defined in IC 36-1-2-13) or unit of federal or state government**
- 16 **because of:**
- 17 (A) bankruptcy;
- 18 (B) foreclosure;
- 19 (C) tax delinquency, including a conveyance under
- 20 IC 6-1.1-24 or IC 6-1.1-25;
- 21 (D) abandonment;
- 22 (E) the exercise of eminent domain, including any purchase
- 23 of property once an offer to purchase has been tendered
- 24 under IC 32-24-1-5;
- 25 (F) receivership;
- 26 (G) other circumstances in which a political subdivision or
- 27 unit of federal or state government involuntarily acquired
- 28 ownership or control because of the political subdivision's
- 29 or unit's function as sovereign; or
- 30 (H) any other means to conduct remedial actions on a
- 31 brownfield;
- 32 **if the person was a person described in subdivision (1)**
- 33 **immediately before the person conveyed ownership or control**
- 34 **of the underground storage tank.**
- 35 (b) "Owner", for purposes of IC 13-23-13, does not include a person
- 36 who:
- 37 (1) does not participate in the management of an underground
- 38 storage tank;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of regulated substances; and

(3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

(c) "Owner", for purposes of IC 13-23, does not include a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that acquired ownership or control of an underground storage tank because of:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(4) abandonment;

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

(7) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign;

(8) transfer from another political subdivision or unit of federal or state government; or

(9) any other means to conduct remedial actions on a brownfield;

unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

SECTION 15. IC 13-11-2-151 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 151. (a) "Owner or operator", for purposes of IC 13-24-1, means the following:

(1) For a petroleum facility, a person who owns or operates the

- 1 facility.
- 2 (2) For a **petroleum** facility where title or control has been
- 3 conveyed because of:
- 4 (A) bankruptcy;
- 5 (B) foreclosure;
- 6 (C) tax delinquency, **including a conveyance under**
- 7 **IC 6-1.1-24 or IC 6-1.1-25;**
- 8 (D) abandonment; ~~or~~
- 9 (E) **the exercise of eminent domain, including any purchase**
- 10 **of property once an offer to purchase has been tendered**
- 11 **under IC 32-24-1-5;**
- 12 (F) receivership;
- 13 (G) **other circumstances in which a political subdivision (as**
- 14 **defined in IC 36-1-2-13) or unit of federal or state**
- 15 **government involuntarily acquired title or control because**
- 16 **of the political subdivision's or unit's function as sovereign;**
- 17 **or**
- 18 (H) ~~a similar~~ **any other means to conduct remedial actions**
- 19 **on a brownfield;**
- 20 to a **political subdivision or** unit of **federal or** state ~~or local~~
- 21 government, a person who owned, operated, or otherwise
- 22 controlled the **petroleum** facility immediately before title or
- 23 control was conveyed.
- 24 (b) Subject to subsection (c), the term does not include a **political**
- 25 **subdivision or** unit of federal ~~or~~ state ~~or local~~ government that
- 26 acquired ownership or control ~~involuntarily of the facility~~ through:
- 27 (1) bankruptcy;
- 28 (2) **foreclosure;**
- 29 ~~(2)~~ (3) tax delinquency, **including an acquisition under**
- 30 **IC 6-1.1-24 or IC 6-1.1-25;**
- 31 ~~(3)~~ (4) abandonment; ~~or~~
- 32 (5) **the exercise of eminent domain, including any purchase of**
- 33 **property once an offer to purchase has been tendered under**
- 34 **IC 32-24-1-5;**
- 35 (6) receivership;
- 36 ~~(4)~~ (7) other circumstances in which the **political subdivision or**
- 37 **unit of federal or state** government ~~unit~~ involuntarily acquired
- 38 title because of the **political subdivision's or** unit's function as

sovereign;

(8) transfer from another political subdivision or unit of federal or state government; or

(9) any other means to conduct remedial actions on a brownfield.

(c) The term includes a **political subdivision or** unit of federal or state ~~or local~~ government that causes or contributes to the release or threatened release of a substance, **in which case the political subdivision or** unit of federal or state ~~or local~~ government is subject to IC 13-24-1:

(1) in the same manner; and

(2) to the same extent;

as a nongovernmental entity under IC 13-24-1.

(d) The term does not include a person who:

(1) does not participate in the management of a petroleum facility;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of petroleum; and

(3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.

SECTION 16. IC 13-11-2-245 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 245. (a) "Vehicle", for purposes of IC 13-17-5, refers to a vehicle required to be registered with the bureau of motor vehicles and required to have brakes. The term does not include the following:

(1) Farm tractors.

(2) Implements of husbandry.

(3) Farm tractors used in transportation.

(4) Mobile homes (house trailers).

(5) Trailers weighing not more than three thousand (3,000) pounds.

(6) Antique motor vehicles.

(b) "Vehicle", for purposes of IC 13-18-12, means a device used to transport a tank.

(c) "Vehicle", for purposes of IC 13-20-4, refers to a municipal waste collection and transportation vehicle.

(d) "Vehicle", for purposes of IC 13-20-13-7, means a motor vehicle, **a farm tractor (as defined in IC 9-13-2-56(a) or IC 9-13-2-56(b)), an implement of husbandry (as defined in IC 9-13-2-77), a semitrailer (as defined in IC 9-13-2-164(a) or IC 9-13-2-164(b))**, and types of equipment, machinery, implements, or other devices used in transportation, manufacturing, agriculture, construction, or mining. The term does not include ~~the following~~:

(~~1~~) a lawn and garden tractor that is propelled by a motor of not more than twenty (20) horsepower.

(~~2~~) ~~A semitrailer.~~

(e) "Vehicle", for purposes of IC 13-20-14, has the meaning set forth in IC 9-13-2-196."

Page 1, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 18. IC 13-18-22-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as otherwise specified in ~~subsection~~ **subsections (b) and (c)**, compensatory mitigation shall be provided in accordance with the following table:

Wetland	Replacement	On-site	Off-site
Class	Class	Ratio	Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) A wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation for purposes of this section. The replacement class of a wetland that is a water of the United States shall be determined by applying the

1 **characteristics of a Class I, Class II, or Class III wetland, as**
 2 **appropriate, to the replacement wetland as if it were an isolated**
 3 **wetland.**

4 ~~(c)~~ **(d)** The off-site location of compensatory mitigation must be
 5 within:

6 (1) the same eight (8) digit U.S. Geological Service hydrologic
 7 unit code; or

8 (2) the same county;

9 as the isolated wetlands subject to the authorized wetland activity.

10 ~~(d)~~ **(e)** Exempt isolated wetlands may be used to provide
 11 compensatory mitigation for wetlands activities in state regulated
 12 wetlands. An exempt isolated wetland that is used to provide
 13 compensatory mitigation becomes a state regulated wetland.

14 SECTION 19. IC 13-20-13-7 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A fee of
 16 twenty-five cents (\$0.25) is imposed on the sale of the following:

17 (1) Each new tire that is sold at retail.

18 (2) Each new tire mounted on a new vehicle sold at retail.

19 (b) The person that sells the new tire or vehicle at retail to the
 20 ultimate consumer of the tire or vehicle shall collect the fee imposed by
 21 this section.

22 (c) A person that collects a fee under subsection (b):

23 (1) shall pay the fees collected under subsection (b):

24 (A) to the department of state revenue; and

25 (B) at the same time and in the same manner that the person
 26 pays the state gross retail tax collected by the person to the
 27 department of state revenue;

28 (2) shall indicate on the return:

29 (A) prescribed by the department of state revenue; and

30 (B) used for the payment of state gross retail taxes;

31 that the person is also paying fees collected under subsection (b);
 32 and

33 (3) is entitled to deduct and retain one percent (1%) of the fees
 34 required to be paid to the department of state revenue under this
 35 subsection.

36 (d) The department of state revenue shall deposit fees collected
 37 under this section **as follows:**

38 **(1) Eighty percent (80%) of the fees collected under this**

1 **section shall be deposited in the waste tire assistance fund**
 2 **established by IC 4-23-5.5-17.**

3 **(2) Twenty percent (20%) of the fees collected under this**
 4 **section shall be deposited** in the waste tire management fund
 5 established by this chapter.

6 SECTION 20. IC 13-23-6-2 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The sources of
 8 money for the fund are as follows:

9 (1) Grants made by the United States Environmental Protection
 10 Agency to the state under cooperative agreements under Section
 11 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C.
 12 6991b(h)(7)).

13 (2) Costs recovered by the state under IC 13-23-13-8 in
 14 connection with any corrective action undertaken under
 15 IC 13-23-13-2 with respect to a release of petroleum.

16 (3) Costs recovered by the state in connection with the
 17 enforcement of this article with respect to any release of
 18 petroleum.

19 (4) Appropriations made by the general assembly, gifts, and
 20 donations intended for deposit in the fund.

21 (5) Penalties imposed under IC 13-23-14 and fifty percent (50%)
 22 of penalties imposed under IC 13-23-12 against owners and
 23 operators of underground petroleum storage tanks.

24 ~~(6) Revenue from the underground petroleum storage tank~~
 25 ~~registration fee deposited in the fund under IC 13-23-12-4.~~

26 SECTION 21. IC 13-23-12-4 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. The department of
 28 state revenue shall collect fees paid under this chapter and deposit the
 29 fees as follows:

30 (1) ~~Fees~~ **The ninety dollar (\$90) fee** paid in connection with
 31 underground petroleum storage tanks shall be deposited as
 32 follows:

33 (A) ~~Forty-five dollars (\$45) shall be deposited~~ in the excess
 34 liability trust fund.

35 (B) ~~Forty-five dollars (\$45) shall be deposited in the petroleum~~
 36 ~~trust fund.~~

37 (2) Fees paid in connection with underground storage tanks used
 38 to contain regulated substances other than petroleum shall be

deposited as follows:

(A) Forty-five dollars (\$45) shall be deposited in the hazardous substances response trust fund.

(B) Two hundred dollars (\$200) shall be deposited in the excess liability trust fund.

SECTION 22. IC 13-25-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Except as provided in subsection (b), (c), or (d), a person that is liable under Section 107(a) of CERCLA (42 U.S.C. 9607(a)) for:

(1) the costs of removal or remedial action incurred by the commissioner consistent with the national contingency plan;

(2) the costs of any health assessment or health effects study carried out by or on behalf of the commissioner under Section 104(i) of CERCLA (42 U.S.C. 9604(i)); or

(3) damages for:

(A) injury to;

(B) destruction of; or

(C) loss of;

natural resources of Indiana;

is liable, in the same manner and to the same extent, to the state under this section.

(b) The exceptions provided by Section 107(b) of CERCLA (42 U.S.C. 9607(b)) to liability otherwise imposed by Section 107(a) of CERCLA (42 U.S.C. 9607(a)) are equally applicable to any liability otherwise imposed under subsection (a).

(c) Notwithstanding any liability imposed by the environmental management laws, a lender, a secured or unsecured creditor, or a fiduciary is not liable under the environmental management laws, in connection with the release or threatened release of a hazardous substance from a facility unless the lender, the fiduciary, or creditor has participated in the management of the hazardous substance at the facility.

(d) Notwithstanding any liability imposed by the environmental management laws, the liability of a fiduciary for a release or threatened release of a hazardous substance from a facility that is held by the fiduciary in its fiduciary capacity may be satisfied only from the assets held by the fiduciary in the same estate or trust as the facility that gives rise to the liability.

(e) **Except as provided in subsection (g), a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government is not liable to the state under this section for costs or damages associated with the presence of a hazardous substance on, in, or at a property in which the political subdivision or unit of federal or state government acquired an interest in the property because of:**

(1) ~~under IC 6-1.1-24 or IC 6-1.1-25, bankruptcy; abandonment;~~
~~or other circumstances in which the political subdivision involuntarily acquired an interest in the property; or~~

(2) ~~to conduct remedial actions on a brownfield;~~
~~after the hazardous substance was disposed of or placed on, in, or at the property.~~

(2) **foreclosure;**

(3) **tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;**

(4) **abandonment;**

(5) **the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;**

(6) **receivership;**

(7) **other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired an interest in the property because of the political subdivision's or unit's function as sovereign;**

(8) **transfer from another political subdivision or unit of federal or state government; or**

(9) **any other means to conduct remedial actions on a brownfield.**

(f) **If a transfer of an interest in property as described in subsection (e) occurs, a person who owned, operated, or otherwise controlled the property immediately before the political subdivision or unit of federal or state government acquired the interest in the property remains liable under this section:**

(1) **in the same manner; and**

(2) **to the same extent;**

as the person was liable immediately before the person's interest in the property was acquired by the political subdivision or unit of federal or state government.

(g) Notwithstanding subsection (e), a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a hazardous substance on, in, or at a property remains subject to this section:

(1) in the same manner; and

(2) to the same extent;

as a nongovernmental entity under this section.

SECTION 23. IC 34-13-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.

(3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

- 1 (9) An act or omission performed in good faith and without malice
- 2 under the apparent authority of a statute which is invalid if the
- 3 employee would not have been liable had the statute been valid.
- 4 (10) The act or omission of anyone other than the governmental
- 5 entity or the governmental entity's employee.
- 6 (11) The issuance, denial, suspension, or revocation of, or failure
- 7 or refusal to issue, deny, suspend, or revoke any permit, license,
- 8 certificate, approval, order, or similar authorization, where the
- 9 authority is discretionary under the law.
- 10 (12) Failure to make an inspection, or making an inadequate or
- 11 negligent inspection, of any property, other than the property of
- 12 a governmental entity, to determine whether the property
- 13 complied with or violates any law or contains a hazard to health
- 14 or safety.
- 15 (13) Entry upon any property where the entry is expressly or
- 16 impliedly authorized by law.
- 17 (14) Misrepresentation if unintentional.
- 18 (15) Theft by another person of money in the employee's official
- 19 custody, unless the loss was sustained because of the employee's
- 20 own negligent or wrongful act or omission.
- 21 (16) Injury to the property of a person under the jurisdiction and
- 22 control of the department of correction if the person has not
- 23 exhausted the administrative remedies and procedures provided by
- 24 section 7 of this chapter.
- 25 (17) Injury to the person or property of a person under supervision
- 26 of a governmental entity and who is:
- 27 (A) on probation; or
- 28 (B) assigned to an alcohol and drug services program under
- 29 IC 12-23, a minimum security release program under
- 30 IC 11-10-8, a pretrial conditional release program under
- 31 IC 35-33-8, or a community corrections program under
- 32 IC 11-12.
- 33 (18) Design of a highway (as defined in IC 9-13-2-73) if the
- 34 claimed loss occurs at least twenty (20) years after the public
- 35 highway was designed or substantially redesigned; except that this
- 36 subdivision shall not be construed to relieve a responsible
- 37 governmental entity from the continuing duty to provide and
- 38 maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(23) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

SECTION 24. [EFFECTIVE UPON PASSAGE] (a) IC 6-3.1-23-4, IC 6-3.1-23-5, IC 6-3.1-23-6, IC 6-3.1-23-12, IC 6-3.1-23-13,

1 **IC 6-3.1-23-15, and IC 6-3.1-23-16, all as amended by this act,**
2 **apply to reportable periods beginning after December 31, 2004.**

3 **(b) The department of state revenue shall implement this act to**
4 **allow the application of the statutes referred to in subsection (a), all**
5 **as amended by this act, to reportable periods beginning after**
6 **December 31, 2004.**

7 SECTION 25. [EFFECTIVE UPON PASSAGE] **(a) The**
8 **environmental quality service council shall study issues concerning**
9 **the establishment and operation of mercury recovery and recycling**
10 **programs in Indiana.**

11 **(b) The council shall submit its report on and make**
12 **recommendations concerning mercury recovery and recycling**
13 **programs described in subsection (a) as part of the council's 2005**
14 **final report.**

15 **(c) This SECTION expires January 1, 2006."**

16 Renumber all SECTIONS consecutively.

(Reference is to SB 169 as reprinted January 28, 2005.)

and when so amended that said bill do pass.

Representative Wolkins